S.B 154 Notes

Section 1

- ~~(1)(a)~~ Removes "caregiver" from the language if MCA 50-46. More specifically ...~~undertake the responsibility for managing the well being~~ language is removed and in (3)(a) the term is replaced with **grower**.
- **(1)(b)(ii)** sever or chronic pain -
  The language, as it stands, leaves room for people to continue to demonize pain patients. What about more clearly defining some of those pain related conditions (thus having the effect of lowering the over all "chronic pain" patient numbers - because those numbers which would have been previously grouped under the banner of chronic pain would be spread out to reveal a better picture of the demographics of patients. The short list to be added could be:
  - rheumatoid /degenerative arthritis
  - neuropathy and necropathy
  - degenerative disk disease
  - Fibromyalgia
  - Temporomandibular Joint Disorder (TMJ)
  - Cerebral palsy
  - PTSD (not pain related but an important one for our veterans)
  - The treatment of symptoms which are the result of the treatment of another condition, such as but not limited to cancer, to which normal treatment involves drugs which cause severe or chronic pain and/or nausea (chemo therapy can cause severe nausea and painful moth sores, radiation therapy also causes nausea)
  - Endometriosis
  - Pain caused by severe trauma, including but not limited to amputation and severe burns, which results in persistent pain due to scar tissue or phantom leg syndrome
  - and more

Just by adding some or all of these to the list of debilitating conditions, the numbers for those who receive their cards for "chronic pain" would drop considerably.

- **(3)(a)** is the definition of **grower**. According to **Section 8 (2)(a)** a person applying for a growers license must submit proof of residency in accordance with Section 1 (12)(a).
  Why not add the term resident to the definition of grower since it is already a requirement? This would clear up confusion in the future.
- **(9)** defines **premises** – What about language such as: *...mean the specific parts of a physical building or property within or upon which a licensed grower cultivates marijuana for medical use...* But does not include private residences which share common property with a facility, (or any space not associated with the cultivation, production, etc of medical marijuana). Some dispensaries have apartments attached for 24 hour live-in security or an individual may have a shop where they cultivate on the same piece of land their private residence is – this language would not allow for them to medicate when **premises** is read through Section 7 (3).
- **(12)(a)** defines **resident** - only applies to growers [Section 8 (2)(a)] – patient requirements according to MCA 50-46-103 have not been changed with regards to out of state patients wishing to obtain a medical marijuana card in Montana.
- (14)(a) defines **Usable Marijuana** – this language is still vague and has been the genesis of a

lot of debate around the industry and with law enforcement. If a certain weight/ per milligram ratio could be established then the usable marijuana language could read: ...means the dried leaves and flowers of marijuana and any pure mixture or preparation of marijuana (hash, hash oil, etc).

- (b) the term does not include the seeds, stalks, and roots of the plant.
- (c) the term does not include ingredients of a non-marijuana origin used in the preparation of alternative medical marijuana products such as edibles (cookies, brownies, tinctures) and topical salves.

These products we could apply a labeling requirement which would mandate all alternatives to specify how many milligrams of THC was in the product. Total "usable marijuana" could by calculated as **total loose marijuana + x milligrams THC = total amount of "usable marijuana".** So if each patient could have 28 grams then: 28grams = loose marijuana + milligrams of THC in the alternatives in your possession (again so long as we had an agreed upon equation of how much a milligram equated to in terms of loose medicine). It could be as easy as **X** milligrams of THC in 3.5 grams = **Y** then **Y** milligrams would equal 3.5 grams of usable product.

- **(9)** This section talks about the DPHHS's requirement to report to the legislature each year. The term **caregiver** has been removed from this legislation throughout and replaced with **grower**. This section however is missing the replacement (grower) language. Was this done on purpose? Does this keep the current reporting requirements but without the numbers previously transmitted about caregivers?

Section 3

- **(2)(a)** allows for patients to have one ounce in possession and growers to have 2 ounces in possession per patient.
- **(8)** this section defines the rights of those who posses a registry identification card or its equivalent or a license or its equivalent issued by another state as having the "same force and effect" as a registry identification card or growers license issued by the state licensing authority.

This whole section is tough to get a grip on. On one hand the rights of out of state patients and those who assist them are obvious, but some of this language could be interpreted as saying an out of state resident could come to Montana and begin to grow. Do they have to register with the state? Will they be subject to D.O.R. Oversight and fees? This section's language could be tightened up to exclude growing and participating in the greater medical marijuana industry of Montana until they met the provisions set forth elsewhere in the bill. Couldn't the DPHHS offer an out of state pre-certification by web? Say a patient from another state wants to visit Montana and have access to medicine. Currently they do not pay anything to the state of Montana and really there is no oversight for them. What if they applied for a temporary patient card online through the DPHHS web-site in which they would submit there current state's card information, the dates requested, etc. I would think that those serious about maintaining access to their medicine when they are visiting Montana would take the preemptive step and per-certify. The state could even charge them a fee, which is more than they do now.

New Section Section 7

- **(1)** A person licensed as a grower may:
  - **(a)** at the premises covered by a license issued pursuant to [**Section 9**] undertake any of the activities specified for medical use in 50-46-102(5) - except that line item includes **use**, which is not allowed unless the grower is also a qualifying patient. Perhaps phrase the language to exclude **use** unless the grower is a qualifying patient. Unless the "Nothing in this chapter may be construed to require" language in 50-46-205 (2) is sufficient.

Which brings up another question. The above mentioned section is being amended to read: ...unless the grower has also applied for and received a registry identification card. The current "medical use"

requirements say you must posses a registry identification card, with works in tandem with the "qualifying patient" language (someone who has been diagnosed with a debilitating condition). If the new language is adopted, would it set a grower who is a patient apart from a patient who is not a grower? Or does the current language cover this? Could we solve this by adopting language to the effect: unless the grower is a qualifying patient.

- **(4)(a)** This section makes the stipulation growers may transfer a maximum of 30% of their plants or usable product to other licensed growers annually. What is meant by transfer? Does the 30% include the samples provided to testing labs in accordance with **Section 7 (5)**? Does transfer include charity, damage, loss due to pests? What if you were right on track with maintaining 30% and your current crop crashed and this was the last quarter of the year? Perhaps another formula which wouldn't force people to hide their extra medicine for fear of selling to much or having to much. What if a penalty in set in place to the tune of a $X fee added to each pound over your 30% paid to the D.O.R.? The effect would hopefully allow excess weight to be brought to light, generate more revenue, and allow everyone to remain in compliance. If a grower over produces it will cost them money, not force them to destroy product. Also when someone dumps a lot of medicine on the market all at once for cheap it drives the market down. Penalties would allow for greater flexibility in the system while generating more revenue for the D.O.R.
- **(5)** States *a grower who also holds a license for a premises may provide a small amount of marijuana cultivated on the premises to a laboratory that is registered pursuant to rules adopted by the states licensing authority.* Again does this include the 30% mentioned in **Section 7 (4)(a)** ? What about a provider/manufacturer who wants to test their products before trying to sell them to a dispensary but do not themselves posses a growers license? They too should be encouraged to have their products tested and thus should be included in the language of this sub-section.

New Section Section 8

- **(2)(c)(i)** states a grower must sign a statement *agreeing to provide marijuana only to individuals with valid registry identification cards who have named the applicant as their grower, and to other growers in accordance with the provisions of **Section 7*** (i.e. the 30% percent clause). Would even add language to the "non-proliferation agreement" which would require each patient and grower to sing a joint agreement swearing to keep medicine away from non-patients and not to sell any to non-patients.
- **(2)(d)** this section set forth requirements for applicants to submit fingerprints *to facilitate a fingerprint ~~and~~ background check by the D.O.J. And the F.B.I.* The "~~and~~" in the previous sentence's quote I believe is a typo. If an applicant has their fingerprints on file from a previous application, the applicant may request the on file fingerprints be used.
- **(3)(a)** allows for a $25 application fee for each grower plus any fees set forth by rule. This section allows for the transmittal of the cost of a background check (I.A.W. with **sub (2) or (4)**) to the applicant.
- **(4)(a)** states a grower, who grows solely for the minor who has named the grower as their provider of medical marijuana, is exempt from **Sections 9,10,12,15,16.**
- **(5)** Allows for growers who hold licenses for premisses *may employ an individual to work at the licensed premises only if the individual has applied for and received a grower's license...* Why couldn't their be some different language for employees. The state could require the grower to temporarily assign a card to an employee for the purpose of helping the grower provide medicine to patients. The state could hold that card as "assigned" until they received notification from the grower the employee no longer worked at that location. This would allow for greater continuity of the work force in this industry. If a grower is an employee and holds

two cards themselves, what happens if the employee's patients change to another grower? According to this law the employee would no longer be a grower and thus would not be afforded the protections of this law.

- **(6)(c)** I am having a little trouble understanding the language in this sub-section. Are we to assume a grower is not protected under the provisions of MCA 50-46 if the patient to whom they provide medical marijuana to terminates the employment of the grower by no longer listing them as the grower **unless** the patient retains said grower's assistance with medical marijuana? Meaning the patient switched from the employer to employee as the registered provider of their medicine?

New Section Section 11

- **(1)&(2)** Both section 1&2 encompass the most comprehensive and to what is comparatively the most responsible wording for the **criteria for denials** language in any bill brought forth before the hose or senate so far this session. The blanket exclusion of those under the supervision of the D.O.C. Could perhaps be altered to include a requirement for a parolee to procure the signed permission of their P.O. and perhaps some additional requirements, but just because you are under the supervision of the D.O.C. is not evidence some how medical marijuana will be less effective as a medicine.
- **(4)(b)** ...*off regular police beats*... This language could certainly be tightened up. Are county lands part of regular police beats, or aren't those lands the jurisdiction of the sheriff and thus would not apply to police beats? If county lands or those areas not regularly patrolled by organized law enforcement are more greatly susceptible to theft, then why not increase requirements for on-sight security. Perhaps 24 hour live-in security, C.C.T.V. On all sensitive areas, safe/vault for storage of medicine, etc.
- **(4)(d)(i)** Why the ...*on the same street*... language? If protecting schools, churches, etc. then why not make the requirement 600 feet in any direction?

New section Section 12

- **(3)** Couldn't the language include for people to mail in their signs of **support** for a licensed premises to the administrator as well as those who wish to oppose? This would allow for greater accuracy with regards to **Section 13's (1)** determination of a prima facie case for or against support of the proposed license premises.
- **(6)(b)** What is meant by *sufficient protest?* Clarification to **(3)** would also allow for an easier definition of **sufficient** in this subsection, by allowing the administrator to weigh all of the written testimony submitted not just the opposition which would be solely solicited to participate in the mailing of testimony to the administrator under the current language.
- **(7)(a)** This subsection states if the state licensing authority receives one protest but not enough to cause a determination of public convenience and necessity hearing, a hearing will held in Helena to determine the merits of the application. It would seem this could abused by some to hold up every application in the state by submitting a letter. This could cost a lot of money to handle each application if each one has to submit to, at the very least, a hearing in Helena. Statewide campaigns against medical marijuana could submit protests to applications from one end of the state even if the protesters themselves were residents of another county altogether.
- **(7)(c)** This subsection describes what the local hearing shall take into account during the course of the local hearing. It references an equation in **MCA 16-4-201 All-beverages license quota** but still includes ...*for all-beverage licenses*... Is this a typo?

New Section Section 15

- **(2)** The language in these subsections are a very responsible addition to this issue and its author should be commended. To further the efforts of public safety, perhaps the D.O.A. could provide an "accepted practices/products" list. The list could include those products, which have been

determined by the D.O.A., to have beneficial effects to the production of medical marijuana and have been proven to be safe to use by both growers and patients. This list could be an inspection criteria to be followed when the yearly inspections take place.

New Section Section 16

- **(1)** Would require a 10%percent fee on a growers gross sales. Gross sales are not always an accurate predictor of a companies strength. In the first year some growers may operate with gross sales of $50,000 but after cost of goods, labor, rent, may actually be operating at a net loss. To further tax the gross sales of any business which operated for a time in the red would be prohibitory. What about fees based on a sliding scale taking into account net gains and years in operation?
- **(3)(a)** growers submit payment equal to 10% of their gross sales less ¼ the cost of annual licensing cost and 100% of the change of location fees. Why not allow for:
    - deductions for the cost of sending medicine to labs for testing of not only of the cannabinoid content but to verify the medicine is devoid of molds, unauthorized chemicals, etc.
    - Deductions for money invested in employee health funds
    - Deductions for a certain percentage of the cost required to maintain records I.A.W. rule as set forth by **Section 17 (4)**.
    - Deductions for monies or medicine donated as charity to groups or individuals for no monetary reimbursement to the grower
    - Deductions for donations to law enforcement organizations who primary purposes are to combat the abuse and distribution of dangerous drugs
    - Deductions for discounts on sales to veterans in a given quarter
    - ** The state could develop a fund/organization to combat prescription drug abuse and allow for deductions from the 10% rule for those donations to the fund/organization

New Section Section 18

- States where the money generated in excess of the required costs of administration are allocated
- Would like to see some funds allocated to begin a patient record – HIPAA compliance training course for all growers with more than 5 patients. The training should address proper receiving, storage, security requirements, and disposal of patient records. This language could also be added to grower requirements as yearly training for growers and their employees.

New Section Section 19

- This section allows for the "grandfathering" of growers who are registered caregivers as of 01 January 2012.
- What about adding the requirement of having each caregiver who is to become a grower upon adoption of this bill to **sign an affidavit** attesting to their having read and understood the requirements of the new legislation and in anticipation of their application to renew their license for the subsequent year.